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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. HASHIM T. CRIDDELL, Defendant and Appellant.	B209319 (Los Angeles County Super. Ct. No. BA297376)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sam Ohta, Judge. Affirmed.

Landra E. Rosenthal, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, James William Bilderback II and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

Hashim T. Criddell appeals from his conviction of first degree murder, with an enhancement for personal use of a firearm. (Pen. Code, §§ 187, subd. (a), 12022.53, subd. (d).)[1] He argues that the evidence is legally insufficient to support the jury's finding of premeditation and deliberation. He also contends that the trial court committed prejudicial error by instructing the jury with CALCRIM No. 226, which directs the jurors to use their "common sense and experience" when evaluating the credibility of witness testimony.

We find no error, and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Late in the afternoon on November 26, 2005, police officers responded to a radio call concerning a shooting and discovered the body of Dejavu Dorsey. The body was in an area known as the "Bungalows," between 92nd Street and 94th Street, along Western Avenue in Los Angeles.

The officers at the scene did not locate any weapons on or around Dorsey's body. He had a tattoo indicating affiliation with the Eleven Deuce Hoover street gang. After an autopsy, the medical examiner concluded that Dorsey had died of a single through-and-through gunshot wound to the head, with a back-to-front trajectory. The distance from which the weapon had been fired could not be determined because there was no soot or stippling in the area of the wound.

The Bungalows are claimed by the Rollin 90's street gang. Appellant, also known by the moniker "Crip Toe," is a member of the Rollin 90's. The Rollin 90's are rivals of the Hoovers.

Henry Robinson is a member of the Rollin 90's. He testified that on the afternoon of the shooting, he, appellant, and between 20 and 30 members of the Rollin 90's were "hanging out" in an alley between 92nd Street and 94th Street. Robinson heard appellant say either, "Leave the alley," or, "go to the front." Appellant seemed to be talking to the

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

entire group. Robinson left the alley, and as he was walking away he heard a gunshot from the alley. Robinson identified appellant out of a six-pack photographic lineup. He also gave the police a written statement which read, "'I was in the alley when Crip Toe was, like, "go to the front"; so I went to the front because I didn't want to see what was about to happen. I hear [*sic*] at least two or three shots.'"

Pierre Redd is a former member of the Rollin 90's. At appellant's preliminary hearing, Redd testified to the following: On the day of the shooting, he was a passenger in a car about to turn into the alley by the Bungalows when he saw appellant in a car on 94th Street, headed away from Western Avenue. Redd spoke to appellant, who told him, "Don't go down that way. Something just happened." Redd proceeded down the alley, where he saw a body. The next day, appellant told Redd what had happened. Dorsey "kept coming over there, asking him to buy crack for $4.00." Appellant took four dollars from Dorsey, but did not give him any crack, and when Dorsey kept returning, "he got tired of the guy." Another Rollin 90's member told appellant that Dorsey was a member of the Hoover gang. Appellant "got a gun from somebody and asked [Dorsey] one more time to leave and the dude didn't respond to him." When Dorsey turned to leave, appellant shot him in the back of the head one time. Appellant then asked another gang member to "verify" that he shot Dorsey. Redd explained this meant "if that really was a Hoover or something, that nobody couldn't get the credit for doing it."

At trial, Redd recanted his prior statements, so the testimony from the preliminary hearing was used to impeach him.[2] The jury also heard a recording of Redd making statements to the police consistent with his testimony at the preliminary hearing. Redd claimed that he had lied in the recorded interview and at appellant's preliminary hearing in hopes of receiving leniency in his own criminal matter.

Although appellant elected not to testify at trial, he had spoken to the police after his arrest. A recording of his interview with Detective John Radtke was played for the

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[2] Pursuant to Evidence Code section 1235, Redd's prior statements were also admissible for their truth.

jury. Initially, appellant denied having been present at the time of the shooting, but later in the interview he admitted his involvement:

"[Appellant]: I was hanging out with them, like I said, the guy was walking back and forth. He was walking back and forth—

"[Radtke]: Which—which guy? The guy—the guy that got killed?

"[Appellant]: Yeah.

"[Radtke]: Okay.

"[Appellant]: He was walking back and forth looking for whatever. Came through—went through the alley. We was all drinking whatever. Came back out there. That's when people—we went down toward the other bungalows where he was at. I walked down there. I was talking to him. [Another member of Rollin 90's] down there. I was talking to him. Conversation came up about him something Hoover or something. . . . They said he's a gang member. There was an altercation and he got shot.

" . . .

"[Radtke]: Okay. How did this thing go down exactly? How—did you guys fight?

"[Appellant]: It wasn't a fight. Not like that but it was more like grab, tussle.

"[Radtke]: Okay. All right. And how—how did he get shot exactly?

"[Appellant]: Pushed him off. Turned around and stumbled away, and then he got shot in the back."

Appellant told Radtke he had seen Dorsey in the past, but had never spoken to him. He stated that he did not know what Dorsey was doing in the area. Appellant said that Dorsey grabbed him first; they began to push each other back and forth; Dorsey tripped; and when Dorsey stood back up, he shot him. Radtke turned the conversation to appellant's motive for shooting Dorsey:

"[Radtke]: I got to ask you man, did you kill him because he was from Hoovers?

"[Appellant]: No

"[Radtke]: Okay. Was he from Hoovers?

"[Appellant]: I don't know. I—

"[Radtke]: Okay. But that's what[] somebody told you?

"[Appellant]: Somebody said he was, but I doubt it.

"[Radtke]: Okay. Now, when you guys had the tussle, was that because he was possibly from Hoovers?

"[Appellant]: I guess. I guess like, like I said, I guess he thought, like I was going to try to do something to him or something when I asked him—

" . . .

"[Radtke]: . . . Tell me exactly why did you shoot him?

"[Appellant]: I felt threatened. He grabbed me, he was trying to tussle with me. . . .

"[Radtke]: Okay. All right. Did he have a gun at all?

"[Appellant]: I have no idea. I didn't search him, nothing.

"[Radtke]: Okay. But you didn't see him with one, but you don't know—

"[Appellant]: I don't know."

The jury heard evidence that Dorsey had the appearance of a person suffering from physical and mental disabilities, as well as substance abuse.[3] A post-mortem toxicology screen indicated the presence of alcohol, cocaine, cocaine metabolites, and marijuana metabolites in Dorsey's blood.

In closing argument, appellant's counsel asked the jury to return a verdict of not guilty, based on self-defense, or voluntary manslaughter, based on imperfect self-defense. The trial court instructed the jury on lawful self-defense, first degree murder, second degree murder, and voluntary manslaughter due to imperfect self-defense. The jury

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[3] We note that the trial transcript's reference to Dorsey being 61 (a fact cited in respondent's brief) is a typographical error. Dorsey was approximately 26 years of age at the time of his death. The number "61" in the transcript appears to refer to Dorsey's height, which was approximately six feet, one inch.

returned a verdict of guilty on the charge of first degree murder (§ 187, subd. (a)) and found true the personal use of a firearm allegation (§ 12022.53, subd. (d)). The jury found not true the criminal street gang allegation (§ 186.22, subd. (b)).

The court imposed a sentence of 25 years to life for the murder conviction, plus a sentence of 25 years to life for the firearm enhancement, to run consecutively. Appellant was also ordered to pay restitution and fees. This timely appeal follows.

DISCUSSION

I

Appellant contends that the evidence of premeditation and deliberation is insufficient to support his conviction of first degree murder.

To determine the sufficiency of the evidence to support a conviction, "we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Koontz* (2002) 27 Cal.4th 1041, 1078.) "'The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt."'" (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

A willful, deliberate, and premeditated killing is murder of the first degree. (§ 189.) "'A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] "Deliberation" refers to careful weighing of considerations in forming a course of action; "premeditation" means thought over in advance.'" (*People v. Halvorsen* (2007) 42 Cal.4th 379, 419.) In *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*), our Supreme Court identified three categories of evidence relevant to resolving the issue of premeditation and deliberation: planning

activity, motive, and manner of killing. Yet, ‘“““*Anderson* does not require that these factors be present in some special combination or that they be accorded a particular weight, nor is the list exhaustive. *Anderson* was simply intended to guide an appellate court’s assessment whether the evidence supports an inference that the killing occurred as the result of preexisting reflection rather than unconsidered or rash impulse. [Citation.]’ Thus, while premeditation and deliberation must result from ‘“careful thought and weighing of considerations”’ [citation], we continue to apply the principle that ‘[t]he process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.”””””’ (*People v. Manriquez* (2005) 37 Cal.4th 547, 577.)

Substantial evidence of all three *Anderson* factors supports the inference that appellant’s killing of Dorsey was premeditated and deliberate.

Evidence of planning is seen in Robinson’s testimony that appellant tried to clear the alley of witnesses shortly before the shots were fired. Robinson perceived appellant to be speaking to the whole group when he said, “Leave the alley,” or, “go to the front.” Although some members of the gang stayed in the alley, Robinson saw others leave when told to do so by appellant. The shots were fired shortly after Robinson and the others left the alley. According to Robinson’s trial testimony, three or four minutes elapsed; in an earlier interview with detectives, he said he heard the shots about 10 seconds after leaving the alley.

The gang rivalry between the Rollin 90’s and the Hoovers is evidence of motive. Appellant was a known member of the Rollin 90’s. He had a number of Rollin 90’s tattoos, from which the jury could infer he took pride in his gang membership. He also had a tattoo of a crossed-out letter “H,” which, according to the gang expert’s testimony, signified that appellant considered Hoovers to be enemies. The expert testified that the Rollin 90’s would perceive the presence of a Hoover member in their territory to be a sign of disrespect. Shortly before the shooting, another member of Rollin 90’s told appellant that Dorsey was a Hoover. Although appellant told Detective Radtke that he

did not believe Dorsey was a Hoover, the jury was free to disbelieve that statement. (*People v. Maury* (2003) 30 Cal.4th 342, 403 ["[I]t is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends."].) That appellant's motive for killing Dorsey was gang rivalry may be inferred from appellant's request that another Rollin 90's member "verify" the murder so no one else could take the credit for killing a Hoover. Such a request is consistent with the gang expert's testimony that the killing of a rival gang member would earn the killer respect within his own gang.

Finally, the manner of the killing—appellant shot Dorsey in the back of his head as Dorsey turned to leave—also is indicative of premeditation.

Appellant raises essentially the same self-defense argument he made at trial. In support of this argument, he relies on the statements he made to the detective regarding the "tussle," and he ignores the evidence of planning and motive discussed above. This argument is simply an invitation to reweigh the evidence, which would require us to usurp the role of the jury as finder of fact. "Even if the evidence could be reconciled with a different finding, that does not justify a conclusion that the jury's verdict was not supported by the evidence, nor does it warrant a reversal." (*People v. Romero*, *supra*, 44 Cal.4th at p. 400.)

We conclude there is substantial evidence of premeditation and deliberation. Since the evidence is sufficient to support the jury's verdict of murder in the first degree, there is no basis for us to reduce appellant's conviction to a lesser included offense as he requests.

II

Appellant next contends the trial court committed prejudicial error by instructing the jury with CALCRIM No. 226, which directs the jurors to use their "common sense and experience" when evaluating the credibility of witness testimony. Appellant argues that this instruction invites juror misconduct by telling jurors to "consider matters beyond

the evidence presented," and that it lessens the prosecution's burden of "prov[ing] each element and fact beyond a reasonable doubt."

Respondent contends appellant forfeited this issue by failing to object to the instruction at trial. "Failure to object to instructional error forfeits the issue on appeal unless the error affects defendant's substantial rights." (*People v. Anderson* (2007) 152 Cal.App.4th 919, 927.) Appellant responds that the issue has not been forfeited because the trial court breached its "fundamental instructional duty" by inviting the jury to consider evidence extraneous to the trial. Assuming that appellant's objections are preserved for appeal, we see no error in the instruction as given.[4]

An identical challenge to the "common sense and experience" language of CALCRIM No. 226 was raised and rejected in *People v. Campos* (2007) 156 Cal.App.4th 1228, 1240 (*Campos*). We conclude the reasoning of that decision is sound: "To tell a juror to use common sense and experience is little more than telling the juror to do what the juror cannot help but do. In approaching any issue, a juror's background, experience and reasoning must necessarily provide the backdrop for the juror's decisionmaking, whether instructed or not. CALCRIM No. 226 does not tell jurors to consider evidence outside of the record, but merely tells them that the prism through which witnesses' credibility should be evaluated is common sense and experience. . . . CALCRIM No. 226 does not instruct jurors to use their common sense and experience in finding reasonable doubt, which could potentially conflict with the beyond a reasonable doubt standard, but only in assessing a witnesses' credibility." (*Ibid*.)

Appellant argues that CALCRIM No. 226 is in conflict with CALCRIM No. 222, which directs the jury to consider only the evidence presented in the courtroom. To the

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[4] As given, CALCRIM No. 226 states in relevant part, "You alone must judge the credibility or believability of the witnesses. *In deciding whether testimony is true and accurate, use your common sense and experience.* The testimony of each witness must be judged by the same standard. You must set aside any bias or prejudice you may have, including any based on the witness' gender, race, religion, or national origin. You may believe all, part, or none of any witness' testimony. Consider the testimony of each witness and decide how much of it you believe." (Italics added.)

contrary, considering the instructions together, as the jury was instructed to do, diminishes the risk that CALCRIM No. 226 could be understood as inviting the jury to consider matters outside the record. As the *Campos* court explained with respect to the same set of jury instructions given in the present case, "[O]ther instructions given to jurors make clear that the term 'common sense and experience' is not a license to consider matters outside of the evidence. Jurors were instructed that they must decide the facts based on the evidence presented (CALCRIM No. 200), that they were not to conduct research or investigate the crime (CALCRIM No. 201), that their determination of guilt had to be based on evidence received at trial (CALCRIM No. 220), that they were only to consider evidence (sworn testimony and exhibits) presented in the courtroom (CALCRIM No. 222), that they had to decide whether facts have been proved based on 'all the evidence' (CALCRIM No. 223), that they should review all the evidence before concluding that the testimony of one witness proves a fact (CALCRIM No. 301) and other instructions emphasizing the exclusive significance of the evidence (CALCRIM No. 302)." (*Campos*, *supra*, 156 Cal.App.4th at p. 1240.)

"[W]e apply the usual presumption that jurors are able to correlate, follow, and understand the court's instructions." (*People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1190.) Appellant identifies nothing in the record to undermine this presumption. We find no error in the trial court's use of CALCRIM No. 226.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.